IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRL.R.C.NO.608 OF 2006

1. Ranjitham
2. Gokul
3. Kaniska .. Petitioners

-vs-

Sampath @ S.Palanisamy .. Respondent

This Revision is filed under section 397 R/W 401 of Crl PC against the order passed by the learned Chief Judicial Magistrate, Erode in M.C.No.34 of 2003 dated 29.3.2006.

For petitioners : : Mr.I.C.Vasudevan

For respondent : : Mr.S.Kaithamalai Kumaran

O R D E R

This revision has been preferred by the revision petitioners/petitioners in M.C.No.34 of 2003 on the file of the Chief Judicial Magistrate, Erode. M.C.NO.34 of 2003 which was filed by the wife and children of the respondent herein for maintenance under Section 125 of Cr.P.C.

2. The admitted fact is that the first petitioner has married the respondent herein on 31.8.1995 and that the minor second and third petitioners are the children born in the wed lock of the first petitioner and the respondent herein. The wife/1st petitioner along with her children had approached the Court for maintenance on the ground that she has been subjected to cruelty by her husband/respondent herein. It is the admitted case of the parties that the respondent is working as a conductor in the State Transport Corporation at Erode and is drawing a monthly salary of Rs.8189.15ps as per Ex P5 and that after the deductions, the take home salary of the respondent/husband is Rs.3614/10ps. In the maintenance petition, the wife/1st petitioner/first revision petitioner herein has further alleged that the husband/respondent herein has demanded more dowry and also insisted her to sign in a

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relinquishment deed to enable him to marry another woman. It is further alleged by the wife in her maintenance petition that the respondent/husband herein is addicted to drink and used to beat her for no reason. Only under such circumstances, she had left the matrimonial home in the year 2003 and has also preferred a complaint with the All Women Police Station, Erode on 15.11.2003 against her husband/respondent herein. To meet the educational expenses, medical expenses and day to day expenses, the wife/first revision petitioner had asked for a sum of Rs.1500/- each for herself and for her two minor children towards maintenance.

3. The respondent would allege that after the birth of his son on 7.6.1996, the wife refused to come and live with the respondent herein for no fault of him which necessitated him to approach the Erode Police on 25.6.1999 with the complaint and on the advise of the police, they lived together which resulted in the birth of the second child and once again the wife/first revision petitioner herein had left the matrimonial home and before the police, she gave an undertaking that within six months , she will come and live with the respondent but she did not do so. The respondent herein thereafter sent a banker's cheque of Rs.1000/- to his wife to meet her expenses on 10.12.2003, which was refused by his wife. According to the respondent, he has also filed H.M.O.P.No.15 of 2004 for restitution of conjugal rights.

4. Before the trial Court, both the first petitioner and the respondent have examined themselves as P.W.1 and R.W.1 respectively. On the side of the petitioners Exs P1 to P5 were marked and on the side of the respondent Exs R1 to R10 were exhibited.

5.After going through the oral and documentary evidence let in before him, the learned trial Judge has awarded a sum of Rs.500/- each towards maintenance for the petitioners and further directed that the said award of maintenance shall be adjusted with the amount of maintenance paid by the respondent in I.A.NO.128 of 2004 in H.M.O.P.No.15 of 2004. Aggrieved by the findings of the learned trial Judge, the wife and children have preferred this revision contending that the amount of maintenance fixed by the learned trial Judge is far below the amount asked for by her in the maintenance petition.

6.Now the point for determination in this revision is whether the revision petitioners are entitled to get an order of enhancement of maintenance amount as prayed for?

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7.Heard Mr. I.C.Vasudevan, learned counsel appearing for the revision petitioners and Mr.S.Kaithamalai Kumaran, learned counsel appearing for the respondent and considered their respective submissions.

8 The Point:
Ex P5 will go to show that even though the husband/respondent in M.C.No.34 of 2003 on the file of the Chief Judicial Magistrate, Erode is getting a monthly salary of Rs.8189/15ps, after various deductions, the take home salary of the husband/respondent herein is only Rs.3614/10ps. There is no document produced on the side of the wife/first petitioner herein to show that apart from the income derived under Ex P5, the respondent is getting income from other sources like, Agricultural income , rental income etc.,

9. The fact that the respondent/ husband has moved the Court for restitution of conjugal rights is not a ground to reject the claim of the revision petitioners herein for maintenance. It is the admitted fact that only after the filing of the petition for maintenance by the wife in the year 2003(M.C.No.34 of 2003) the husband/respondent herein has approached the Sub Court, Erode for restitution of conjugal right by way of filing H.M.O.P.No.15 of 2004. The first petitioner along with her children viz., 2nd and 3rd revision petitioners are separately living with her parents . The reason for her separation is that she had met with cruelty and demand of dowry at the hands of the husband/respondent herein.

10. Under such circumstances, I am of the view that in the cost of living to see both end meet, the amount of maintenance of Rs.500/- fixed by the trial Judge to the first revision petitioner cannot be sufficient to meet her day today expenses, involving in food , medicines etc.,. apart from meeting the educational expenses for the minor second and third revision petitioners, I am of the view that to meet the ends of justice, the maintenance amount ordered by the learned trial Judge to the first revision petitioner is to be enhanced from Rs.500/- to Rs 1000/- per mensum.

11. Taking into consideration, the take home salary of the husband/respondent herein under Ex P5, I am of the view that at present the maintenance fixed for the minor children need not be enhanced. If circumstances changes, it is open to the revision petitioners herein to file appropriate application for the enhancement of the maintenance amount before the appropriate forum. The point is answered accordingly.

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12. In fine, the revision petition is allowed in part. The order in M.C.No.34 of 2003 on the file of the Chief Judicial Magistrate, Erode in respect of the first petitioner/first revision petitioner herein is set aside and the amount of maintenance awarded to the first petitioner has been enhanced and fixed as Rs.1000/- instead of Rs.500/-, to be paid by the respondent herein from the date of filing of the maintenance petition. In other aspects, the order of the learned trial Judge in M.C.No.34 of 2003 on the file of the Chief Judicial Magistrate, Erode is hereby confirmed. The above said enhancement amount is to be adjusted with the interim maintenance amount said to have been awarded in I.A.No.128/2004 in H.M.O.P.No.15 of 2004. on the file of Sub Court, Erode, filed by the respondent/husband.

sg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chief Judicial Magistrate, Erode.

2. The Principal Sub Judge, Sub Court, Erode.

+ 1 cc to Mr. I. C. Vasudevan, Advocate, SR No.41456

+ 1 cc to Mr. A. K. Kumarasamy, Advocate, SR No.41447

Crl.R.C.No.608/2006

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